



CTIA

Building The Wireless Future™

Cellular Telecommunications Industry Association

EX PARTE OR LATE FILED

Andrea D. Williams

Assistant General Counsel

March 29, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

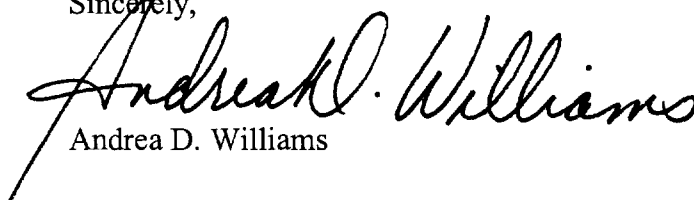
**Re: *Ex Parte* Presentation
In the Matter of Communications Assistance for Law Enforcement Act,
CC Docket No. 97-213**

Dear Ms. Salas:

On March 29, 1999, the Cellular Telecommunications Industry Association ("CTIA") hand delivered the attached letter to Mr. Julius Knapp, Chief, Policy & Rules Division of the FCC's Office of Engineering and Technology. CTIA also hand delivered a copy of the letter to Ms. Jeanine Poltronieri, Senior Counsel, Wireless Telecommunications Bureau

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and an attachment are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,


Andrea D. Williams

Attachment (1)

No. of Copies rec'd 0 + 1
List A B C D E





CTIA

Building The Wireless Future

Cellular Telecommunications Industry Association

Michael F. Altschul

Vice President/General Counsel

March 29, 1999

Julius P. Knapp
Chief, Policy & Rules Division
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

**Re: In the Matter of Communications Assistance for Law
Enforcement Act, CC Docket No. 97-213, Systems Security
and Integrity Regulations**

Dear Mr. Knapp:

On March 15, 1999, the Federal Communications Commission ("Commission") released its Report and Order regarding implementation of Section 105 of the Communications Assistance for Law Enforcement Act ("CALEA"). The Cellular Telecommunications Industry Association ("CTIA") commends the Commission for its thoughtful work in promulgating a very limited and practical set of rules to assist telecommunications carriers to meet their system security and integrity obligations under CALEA. CTIA writes, however, to alert the Commission that two provisions regarding recordkeeping require clarification.

First, the Commission has required carriers to "maintain records of call-identifying information and unauthorized interceptions (including the content of unauthorized interceptions) for ten years. Par. 50 (emphasis added). Then, the Commission required carriers to "maintain secure and accurate records of the content of each authorized interception of communications for a period of time determined by them in accordance with the policies and procedures that they establish." Par. 51 (emphasis added).

The requirements, as stated, suggest that carriers, rather than law enforcement, intercept the content of communications and associated and call-identifying information. In fact, carriers merely enable government access to call content and call-identifying information; they do not themselves acquire and retain such information. CTIA believes that law enforcement will concur with this



assessment. Indeed, interception orders authorize only law enforcement to acquire the contents of communications or call-identifying information while directing carriers to provide the technical assistance necessary to do so. See 18 U.S.C. §§ 2518, 3124.

The Commission established its two-tier records retention system based on the understanding that carriers actually maintained copies of intercepted communications and call-identifying information. Instead, carriers maintain records of the interceptions and associated authorizations. It does not appear that there is any reason to maintain such information -- which is duplicative of the records law enforcement maintains for ten years -- for an extended period of time. Accordingly, CTIA suggests that the Commission rectify this misunderstanding by modifying Section 64.2104(b) of its rules to require carriers to maintain secure and accurate records of all interceptions for a reasonable period of time as determined by the carrier.

Second, the Commission required carriers to prepare and maintain a certification for each wiretap, pen register or trap and trace that includes "the start date and time of the opening of the circuit for law enforcement." Par. 44. The language suggests that the start date of any order is when content or call-identifying information is first delivered to law enforcement rather than when the order is implemented in the carrier's system. This ambiguity must be corrected because carriers (and law enforcement) require clear rules to ensure that the specified duration of an interception is not exceeded. Thus, for example, the 30-day clock for a wiretap order commences when a carrier activates a wiretap, not when law enforcement receives the first communication, even though the events often align. Further, as written, the rule might be construed to require dedicated circuits for delivery of intercepted information when switched delivery may be preferred by a carrier or law enforcement agency.

CTIA suggests that the Commission replace the provision with a requirement for carriers to record the date and time each wiretap, pen register or trap and trace is activated. Such a change would clarify any ambiguity regarding a carrier's ability to properly account for the duration of an interception and that dedicated circuits for wiretaps are not required.

CTIA believes that these two changes would clarify the Commission's order. The Commission has the authority to make these changes on its own motion. See 47 C.F.R. § 1.108 ("The Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in Sec. 1.4(b) of these rules.") No change in

the effective date of the Report and Order should be necessary as a result of this action.

Sincerely,



Michael F. Altschul

Vice President and General Counsel

cc: Jeanine Poltronieri, Senior Counsel,
Wireless Telecommunications Bureau